

Complaint

Mrs O is unhappy that Revolut Ltd didn't reimburse her after she told it she'd fallen victim to a scam.

Background

In 2023, Mrs O said she received a WhatsApp message from someone who claimed to work for a recruiter. Mrs O had been applying for jobs online and so she believed the message was genuine. She was told a role was available where she could earn money by reviewing low-selling products to help merchants boost visibility and sales. She didn't realise it at the time, but she hadn't been contacted by a genuine recruiter, but a fraudster.

She was asked to complete tasks on a platform that the fraudsters gave her access to. She believed that each task she completed would earn her commission. However, in order to do so, she had to "fund" her account. She did this in the belief that she would get that money back in addition to the commission she believed she was earning.

She was instructed to make payments to two accounts held in her name at third-party cryptocurrency exchanges. She was told this was the mechanism by which the company received payments. Once the funds were deposited at those exchanges, they were converted to cryptocurrency and transferred into the control of the fraudster.

She used her Revolut account to make the following payments by card:

1	2 October 2023	£20
2	2 October 2023	£340
3	3 October 2023	£380
4	3 October 2023	£1,500
5	3 October 2023	£18
6	4 October 2023	£3,300
7	4 October 2023	£772
8	4 October 2023	£85
9	5 October 2023	£3,000

Mrs O said she became increasingly concerned as she was required to pay more money to withdraw the funds she had already deposited. When she refused to pay a £10,000 fee to enable a withdrawal, she says that the fraudster's tone changed significantly. It was at that point that she realised that she must have fallen victim to a scam.

She reported the scam to Revolut, but it declined to refund her. She wasn't happy with that and so she referred her complaint to this service. An Investigator reviewed the case and

partially upheld it. She concluded that Revolut should have done more regarding the £3,300 payment, but also found that Mrs O bore some responsibility for her losses. As a result, the investigator recommended that Revolut refund 50% of her losses from that point onward.

Mrs O accepted the Investigator's recommendation. Revolut disagreed and so the case has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that an Electronic Money Institution ("EMI") such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In *Philipp*, the contract permitted Barclays not to follow its customer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a legal duty to do so.

In this case, the terms of Revolut's contract with Mrs O modified the starting position described in *Philipp*, by expressly requiring Revolut to refuse or delay a payment "*if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks*".

So Revolut was required by the implied terms of its contract with Mrs O and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in October 2023 have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers. Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in October 2023 have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

In reaching the view that Revolut should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMIs like Revolut do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;¹
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments;
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

¹ For example, Revolut's website explains it launched an automated anti-fraud system in August 2018: https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fourfold_reducti on in card fraud and had offers from banks /

For example, it is my understanding that in October 2023, where Revolut identified a scam risk associated with a card payment through its automated systems, it could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with “*due skill, care and diligence*” (FCA Principle for Businesses 2), “*integrity*” (FCA Principle for Businesses 1) and a firm “*must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems*” (FCA Principle for Businesses 3).
- Over the years, the FCA, and its predecessor the FSA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by firms to counter financial crime, including various iterations of “*Financial crime: a guide for firms*”.
- Regulated firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship). I do not suggest that Revolut ought to have had concerns about money laundering or financing terrorism here, but I nevertheless consider these requirements to be relevant to the consideration of Revolut’s obligation to monitor its customer’s accounts and scrutinise transactions.
- The October 2017, BSI Code², which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Since 31 July 2023, under the FCA’s Consumer Duty³, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was “*consumers becoming victims to scams relating to their financial products for example, due to a firm’s inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers*”⁴.
- Revolut should also have been aware of the increase in multi-stage fraud, particularly

² BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

³ Prior to the Consumer Duty, FCA regulated firms were required to “pay due regard to the interests of its customers and treat them fairly.” (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

involving cryptocurrency⁵ when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.

- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in October 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and
- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in October 2023, Revolut should in any event have taken these steps.

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

Should Revolut have recognised that Mrs O was at risk of financial harm from fraud?

The Investigator identified payment 6 in the table above as the point at which Revolut ought to have been concerned that Mrs O might be at risk of financial harm due to fraud. I'd agree with her conclusions on that point. Mrs O had made previous cryptocurrency payments to other platforms and so the mere fact that she was making payments to a new cryptocurrency exchange needn't have been cause for concern. However, the values of those previous transactions were significantly lower. Furthermore, those earlier payments were spread out over an extended period of time – but these payments were concentrated within a short period and showed steady increases in value.

I find that Revolut ought to have had concerns at that point and shouldn't have processed payment 6 without first taking some steps to provide a proportionate warning to Mrs O about the risks of proceeding. I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's primary duty to make payments promptly.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with other firms, has developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by October 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by October 2023, on identifying a heightened scam risk, a firm such as Revolut should have taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

Taking that into account, I am satisfied that Revolut ought to have attempted to narrow down the potential risk further. I'm satisfied that when Mrs O made payment 6, Revolut should – for example by asking a series of automated questions designed to narrow down the type of cryptocurrency related scam risk associated with the payment she was making – have provided a scam warning tailored to the likely cryptocurrency related scam Mrs O was at risk from.

In this case, Mrs O was falling victim to a 'job scam' – she believed she was making payments in order to receive an income. As such, I'd have expected Revolut to have asked a series of simple questions in order to establish that this was the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Mrs O gave. I'd expect any such warning to have covered off key

features of such a scam, such as making payments to gain employment, being paid for fake reviews to promote products, and having to pay increasingly large sums without being able to withdraw money.

I've not seen any evidence to indicate Mrs O wouldn't have responded to Revolut's questions openly and honestly. I also think, given how closely Mrs O's circumstances match those of the typical job scam, it's more likely than not that such a warning would've resonated with her and dissuaded her from going ahead with payment 6 and the subsequent ones.

Is it fair and reasonable for Revolut to be held responsible for Mrs O's loss?

Revolut has addressed an Administrative Court judgment, which was referred to in a decision on a separate complaint. As I have not referred to or relied on that judgment in reaching my conclusion in relation to the losses for which I consider it fair and reasonable to hold Revolut responsible, I do not intend to comment on it. I note that Revolut says that it has not asked me to analyse how damages would be apportioned in a hypothetical civil action but, rather, it is asking me to consider all of the facts of the case before me when considering what is fair and reasonable, including the role of all the other financial institutions involved.

In doing so, I have taken into account that these payments were made to accounts with third party firms and those accounts were in Mrs O's name. As a result, she didn't experience any financial loss at the point the funds left her Revolut account.

But as I've set out in some detail above, I think that Revolut still should have recognised that she might have been at risk of financial harm from fraud when she made payment 6, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses she suffered. The fact that the money used to fund the scam wasn't lost at the point it was transferred to her own account does not alter that fact and I think Revolut can fairly be held responsible for her loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered the fact that she has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and she could instead, or in addition, have sought to complain against those firms. But Mrs O has not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs O's compensation in circumstances where: the consumer has only complained about one respondent from which they are entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mrs O's loss from payment 6 onwards (subject to a deduction for her own contribution which I will consider below).

Should Mrs O bear any responsibility for their losses?

In reaching a decision on this point, I've taken into account what the law says regarding contributory negligence while keeping in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances. Having done so, I am persuaded that it would be fair and reasonable for Revolut to make a deduction from the compensation payable to Mrs O because she ought to bear some responsibility for what happened here.

She received a job offer through unsolicited contact on WhatsApp. There were no formalities associated with the job – for example, there was no written contract or clear agreement as to the way the job worked. This information was only conveyed to her informally. I've also looked at the messages exchanged between Mrs O and the fraudster. On several occasions, the charges she was asked to pay weren't consistent with her expectations. She was reassured that she'd be able to withdraw earnings to cover those costs and the fraudsters put pressure on her to borrow from friends or to take out personal loans to tide her over. I think that by the time she made payment six, she ought to have started questioning the legitimacy of the arrangement.

Finally, I think that she ought to have been concerned that the arrangement was an inversion of the typical employer-employee relationship. Most people expect to be paid by their employers for the work they do, rather than the other way around. From the evidence I've seen, the fraudsters don't appear to have attempted to explain this unusual arrangement and Mrs O doesn't appear to have asked about it. I think she ought to have proceeded only with great caution here.

Final decision

For the reasons I've explained above, I uphold this complaint in part. If Mrs O accepts my final decision, Revolut Ltd should refund 50% of payments 6, 7, 8 and 9. It should also add 8% simple interest per annum to those payments calculated to run from the date they left her account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 18 April 2025.

James Kimmitt
Ombudsman